



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 9016406

Date: OCT. 5, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an actor, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

### **I. MOTION REQUIREMENTS**

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show

proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition.

## II. ANALYSIS

### A. Motion to Reopen

The Petitioner previously claimed to satisfy four out of ten initial evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). On motion, the Petitioner asserts that she meets a fifth criterion, defined at 8 C.F.R. § 204.5(h)(3)(vi), pertaining to evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

A printout from an online retailer’s website lists the Petitioner as the author of [REDACTED] [REDACTED] which apparently exists only as an e-book. This book does not establish eligibility or overcome the dismissal of the appeal. The printout shows the book was published in September 2019, almost two years after the petition’s December 2017 filing date. Therefore, it cannot establish that the Petitioner already met the eligibility requirements at the time of filing, as required by 8 C.F.R. § 103.2(b)(1).

Furthermore, the regulation requires authorship of (1) scholarly articles (2) in the field, (3) in professional or major trade publications or other major media. The Petitioner has not shown that [REDACTED] meets any of these requirements. First, the Petitioner has not shown that this book is a scholarly article. Second, she claims extraordinary ability as an actor; there is no indication that the book has any relation to the field of acting. Third, the Petitioner has not shown that the book constitutes professional or major trade publication or other major media. Rather, the book appears to be self-published; the retailer’s listing does not identify a publisher. Its highest sales ranking is [REDACTED] [REDACTED]; the Petitioner has not shown that this ranking is consistent with “major media.”

The Petitioner’s post-filing self-publication of an e-book unrelated to acting does not establish good cause for reopening the petition. We will therefore dismiss the motion to reopen.

### B. Motion to Reconsider

Apart from the new claim discussed above, the bulk of the Petitioner’s motion brief repeats, verbatim, the appellate brief, with two inserted passages contending that we erred in our appellate decision. The Petitioner, however, does not identify or rebut any specific errors in our decision.

The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision, or must show how a change in law materially affects our prior

decision. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).<sup>1</sup> (“[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . decision. The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . .”)

The Petitioner has not established that the appellate decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence of record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and must be dismissed.

### III. CONCLUSION

The motion to reopen relies on evidence that did not exist at the time of filing, and which has no demonstrated relevance to the Petitioner’s area of claimed extraordinary ability. The motion to reconsider merely repeats the earlier brief without identifying any specific error in the intervening appellate decision. For these reasons, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The combined motion to reopen and reconsider will be dismissed for these reasons.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

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<sup>1</sup> *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals, governed by 8 C.F.R. § 1003.2(b)(1), which states: “A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority.” These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.